

DATE 2/19/09
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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

PIVOD TECHNOLOGIES, L.L.C.

CIVIL ACTION 08-1350

VERSUS

CHIEF JUDGE RICHARD T. HAIK, SR.

ALELISE LINETTE GUILLORY, ET AL

MAGISTRATE JUDGE METHVIN

RULING

Before the Court is a Motion to Set Aside Entry of Default filed by Alerise Linette Guillory and Guillory Payroll solutions, Inc. (Doc. #17). After a thorough review of the record and all arguments of counsel, the Motion is **DENIED**.

According to the record, the original Complaint (Doc. #1) in this matter was filed on September 12, 2008, with a First Supplemental and Amended Complaint (Doc. #3) filed on September 18, 2008. Summons were issued on October 1, 2008. According to the Exhibits submitted by the plaintiff, Pivod Technologies sent a stamped copy of both the Summons, the original Complaint and the First Supplemental and Amended Complaint to the defendants via certified mail to the addresses listed in the Louisiana Secretary of State database on October 14, 2008. However, both were returned as unclaimed. The Summons were eventually executed by a private process server on November 4, 2008. Accordingly, the defendants were required to answer on or before November 24, 2008. On November 15, 2008, the parties agreed to a ten day extension of the response deadline until December 4, 2008. That agreement, however, was not submitted to, nor approved, by the Court as there is no evidence of it in the record prior to the filing of the instant motion.

On December 5, 2008, a Motion for Entry of Default was made by the plaintiff and the Clerk's Entry of Default was filed on December 8, 2008. The defendants then filed an answer on December 10, 2008 which was deemed deficient due to the fact that a default had been entered. They were notified on that date that the only permissible pleading would be a Motion to Set Aside the Default, which they filed on December 16, 2008.

The defendants argue that they were unable to arrange a meeting with their counsel within the time allowed for filing an answer. According to the defendants, counsel was eventually retained on December 10, 2008 and an answer was filed that date. However, as reflected in Exhibit D attached to the plaintiffs opposition to the Motion to Set Aside the Default, defendants' counsel Mr. Lemoine had been in contact with opposing counsel on behalf of the defendants as early as November 15, 2008 at which time he requested an extension of time to answer. Consequently, the argument that counsel was unable to meet with his clients during the time period in which an answer was due carries no weight.

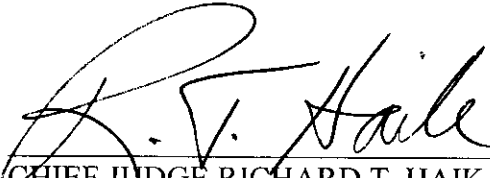
Defendants further argue that service is improper as the documents were left with the Ms. Guillory's minor son, who is fourteen years old. The Court also finds that this argument has no merit as the process server remained at the site until Ms. Guillory arrived and confirmed that she was in receipt of the papers. Consequently, she was put on notice of the lawsuit and received all documents at that point at the very latest. For the record, the Court notes that the evidence strongly suggests that the defendants were notified of this suit long before November 4, 2008.

Finally, defendants argue that they have a meritorious defense and, as such, the default should be set aside. The Court first notes that the existence of a meritorious defense alone does not result in an automatic set aside of a default. Secondly, the defendants have not presented

sufficient evidence of a defense which would overcome the entry of the default in this case.

Based on the evidence presented and the record as a whole, the Court finds that the defendants willfully attempted to avoid service and have not shown good cause for the failure to timely file an answer. As such, the Motion to Set Aside Entry of Default is **DENIED**.

THUS DONE and **SIGNED** on this 18th day of February, 2009.



CHIEF JUDGE RICHARD T. HAIK, SR.
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA